

REMARKS

Claims 5-8 are pending in this application.

In this Office Action, the Examiner rejected claims 5-8 under 35 U.S.C. § 102(e) as being anticipated by, or, in the alternative under 35 U.S.C. § 103(a) as being obvious over, U.S. Patent No. 6,417,428 (Thomashow et al.). According to the Examiner, Thomashow et al. teach a method of altering an environmental stress response of a plant by providing a recombinant molecule comprising a polynucleotide that encodes a polypeptide that has the amino acid sequence of the Applicants' SEQ ID NO: 6 (claim 19, SEQ ID NO: 1). The Examiner notes that while SEQ ID NO: 1 of Thomashow et al. is only 94.1% identical to Applicants' SEQ ID NO: 5, it discloses an identical coding region, and the differences between them do not appear to lead to a teaching of unexpected results

The Thomashow et al. reference has a priority date for this disclosure of November 23, 1998. Applicants note that, although the Thomashow et al. reference claims priority from U.S. patent applications filed prior to November 23, 1998, the filing date of the subject matter in the Thomashow et al. reference that is used to reject claims 5-8 herein has a filing date only of November 23, 1998 (indeed, Applicants have determined that the parent Thomashow et al. applications do not contain sufficient disclosure to anticipate or render obvious claims 508 herein.

Applicants herewith submit a certified translation of Japanese Patent Application No. 292348/1998, filed October 14, 1998, from which the present application claims priority under 35 U.S.C. § 119, thus perfecting the claim for foreign priority from this Japanese application. Accordingly, because the present application has a foreign priority date of October 14, 1998 that is prior to the November 23, 1998 filing date of the Thomashow et al. reference, the rejection based upon Thomashow et al. is overcome. Applicants respectfully request that the Examiner withdraw his prior art rejections under 35 U.S.C. § 102(e) or § 103(a) based upon Thomashow et al. and pass claims 5-8 to allowance.

Conclusion

Reconsideration of the present application, as amended, is requested. If, upon review, the Examiner determines that the application is not in condition for allowance, Applicants respectfully request the Examiner to contact the undersigned for a telephone interview before an Office Action is issued in the application. A favorable action on the merits is earnestly solicited.

Respectfully Submitted,
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